

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
NOVEMBER 4, 2004**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, November 4, 2004, beginning at 2:00 P.M. at the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Vice-Chairperson; Mr. James W. Van Luven; Mr. Maximilian A. Tufts, Jr.; Mrs. Carolyn Bowen; Mr. Roger R. Martella, Jr.; and Mr. Serf Guerra. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberly Johnson, Zoning Administrator; Mr. Todd Benson, Assistant Zoning Administrator; Mr. Fred Hodge, Senior Planner; and Mrs. Debbie Dotson, Office Associate III.

Mrs. Mailler welcomed the newest members of the BZA, Mr. Roger R. Martella, Jr., and Mr. Serf Guerra.

MINUTES: On a motion made by Mrs. Bowen and seconded by Mr. Van Luven, the BZA moved to approve the September 2, 2004, minutes with changes as given to staff.

The motion carried unanimously.

On a motion made by Mrs. Bowen and seconded by Mr. Van Luven, the BZA moved to approve the October 7, 2004, minutes with changes as given to staff.

The motion carried unanimously.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE: Mrs. Dotson read the Public Hearing protocol. Mr. Hodge stated, that to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners.

**SPECIAL PERMIT #SPPT05-MA-004, JOHN A. MCINTIRE (OWNER) /
WILLIAM MCINTIRE AND JOHN R. MCINTIRE, STILLHOUSE VINEYARDS
(APPLICANTS)**

Applicants are seeking special permit approval for a winery with minor events on the property, PIN #6929-75-3501-000, located at 4366 Stillhouse Road, Marshall District, Hume, Virginia.

Mr. Hodge stated that the applicants have requested additional information from the Zoning Administrator and requested the public hearing be deferred until the December 2, 2004, BZA meeting pending receipt of that information.

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the BZA moved to defer the public hearing until the next meeting of the BZA.

The motion carried unanimously.

SPECIAL PERMIT #SPPT05-CR-005, DAVID J. LUCASH, LUCASH ENTERPRISES, LLC, (OWNER)

Owner is seeking special permit approval for a contractor's storage yard on the property, PIN #6981-15-9981-000, located at 9566 James Madison Highway, Cedar Run District, Warrenton, Virginia.

Mr. Hodge stated that the BZA held a public hearing on this proposal October 7, 2004 and closed the hearing. He stated that the BZA visited the site earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Dave Lucash, owner, appeared representing the application and stated agreement with the staff report.

Mrs. Bowen asked Mr. Lucash how soon after site plan approval he would install the fence and landscaping. Mr. Lucash stated they would be installed immediately, weather permitting.

There was discussion about replacing any landscaping that might die. Mr. Lucash stated that he would be planting 10' to 12' Leland Cyprus to provide immediate screening. Mr. Guerra asked if the plants would be replaced with similarly sized plants in the future, if any died. Mr. Lucash indicated any replacements needed would be 10' to 12' in size, as it would be difficult and prohibitively expensive to plant larger trees and the trees generally grow quickly.

There was discussion about the proposed fence. Mr. Lucash noted that a 5' fence will not screen as well as an 8' fence. Mrs. Johnson stated that the 8' fence could be used but would have to be set back to meet the setback requirements of the zoning district. Any fence located where shown on the plan could not exceed 5' in height.

On a motion made by Mr. Van Luven and seconded by Mr. Meadows, the BZA noted that due notice and hearing, as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009, had been provided, and moved to grant the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.

4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The site shall be in general conformance with the special permit plat submitted with the application, prepared by Schools and Townsend, P.C.
2. Normal hours of operation shall be 6:30 a.m. until 5:30 p.m. Monday through Saturday.
3. All vehicles and materials shall be completely screened from view or stored entirely within a building.
4. The special permit shall be limited to a period of 3 years.

The motion carried 6-0, with Mr. Martella abstaining.

SPECIAL PERMIT #SPPT05-SC-014, JEFFREY D. AND PAMELA L. JENKINS (OWNERS)

Owners are seeking special permit approval to reduce the side yard setback for a proposed barn from 100' to 30', PIN #6996-97-5445-000, located at 5456 Old Bust Head Road, Scott District, Broad Run, Virginia.

Mr. Hodge stated that the BZA had visited the site earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Pamela L. Jenkins, owner, appeared representing the application and noted agreement with the staff report. Mrs. Jenkins stated that after the BZA site visit, she and Mr. Jenkins looked at smaller barns as a possibility but found that the smaller barn would not be feasible.

Mrs. Mailler asked about the site where the barn was staked out. She noted that it did not appear to be 30' from the property line, unless the property line extended beyond the tree line. Mrs. Jenkins stated that their property extended beyond the tree line and before the barn was built they would have a surveyor stake out the location so that the 30' setback was certain to be met. Ms. Mailler asked about the location of the drainfield and well.

Mrs. Jenkins noted that the drainfield was in front of the house and that the well was shown on the plan; neither is in the vicinity of the proposed barn.

Mr. Meadows asked for confirmation that the property width is 210'. He stated that it is important to have the footage correct. Mrs. Jenkins stated that the property narrows towards the back so the front of the barn might be 210' while the rear of the barn would be 204'. Mr. Meadows asked Mrs. Jenkins if she would be opposed to moving the barn to the right and have 100' from the right property line and 80' from the left property line, to lessen the impact on the lot. Mrs. Jenkins stated she did not object if that was the only way to get approval.

Mrs. Bowen stated that she could support a 50' setback. Mr. Meadows asked Mrs. Johnson if having the dimensions correct was critical since this was a special permit and not a variance. Mrs. Johnson stated that the BZA could set the eastern property line setback of 100' with the barn dimension being 24'x36' and that would allow for some leeway in the setback from the western property line.

Mrs. Mailler asked if there were any speakers for or against the application. In that there were no speakers, the public hearing was closed.

On a motion made by Mr. Meadows and seconded by Mr. Tufts, the BZA noted that due notice and hearing, as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009, had been provided, and moved to grant the special permit, with the following findings and conditions:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The barn shall be located 80' from the northwestern property line and shall be no larger than 24' in width and 36' in length.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the BZA moved to amend the condition of the previous motion:

1. The setback from parcel 42 is to be maintained at 100' with the barn remaining 24' wide and the remainder setback would be from parcel 40.

The amended motion carried unanimously.

The motion as amended carried unanimously.

SPECIAL PERMIT #SPPT05-SC-015, ALL GOD'S CREATURES (OWNER)

Owner is seeking special permit approval to expand and renovate an existing kennel operation on the property, PIN #7905-90-1151-000, #7905-80-5137-000, #7905-80-8308-000, #7905-80-9538-000, #7905-80-3038-000, #7905-80-8280-000, #7904-95-1802-000, #7904-89-5643-000, and #7904-89-6798-000, located at 7353 Woodlawn Lane, Scott District, Warrenton, Virginia.

Mr. Hodge stated that the BZA made a visit to the site earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mrs. Bowen stated that she would recuse herself from any discussion and vote on this application because she had made several decisions on the property while serving as Zoning Administrator for the County.

Mr. James Tucker, applicant's representative, noted agreement with the staff report. Mr. Tucker submitted new letters in favor of the application. He stated that the owners would be working with Scott Leonard, Leonard Designs, Inc., a nationally known kennel design engineer.

Mr. Martella asked Mr. Tucker what the current traffic patterns were. Mr. Tucker stated that the pattern is slightly clustered during the day. Mr. Martella asked there was one pet or more per car. Mr. Tucker said it could be 1, 2, or 3 pets per vehicle.

Mrs. Mailler asked about the doggy day care and how many animals a day used the day care. Mr. Tucker stated that the day care is within a closed facility and limited space is available for that component of the business. Mother Eirene stated that aspect of the business is growing and the numbers vary from day to day but probably anywhere from 5-7 dogs is typical.

Mr. Guerra asked Mr. Tucker to define the difference between the line source and the point source on noise. Mr. Tucker stated the information provided was from the State of Minnesota and was a guideline, that he does not have the actual ordinance from that state, and that he could not provide a technical response on sound himself.

Mr. Martella asked about how the soundproofing was to be achieved. Mr. Tucker explained double-wall construction would be used to limit the sound, and that a noise limit needed to be established to construct to. Mr. Tucker indicated he was certain that they could meet the County's ordinance limitations regarding sound. Mr. Meadows stated that he was comfortable with setting a noise level for the kennel and asked if that was acceptable to the applicant. Mr. Tucker stated that setting a level is easier to design to and he would prefer that approach. Mr. Tucker stated that a sound engineer should be brought in to measure the typical neighborhood sound level and the limit should be set slightly above that result.

Mrs. Mailler asked if there were any speakers for or against the application.

John Reber, area resident, appeared opposing the application. He stated that it was not an appropriate use in the R-1 Zoning because the noise from the dogs is heard in the early morning and evening hours. He stated that the kennel was to have windows that opened and that would limit the ability to control the noise from the dogs.

David Kuzman, resident, appeared opposing the application. He stated his main concern was with traffic. He also noted that the noise of dogs barking is very loud, especially early in the morning.

Major Mark Padgett, client of Paw's Awhile, appeared in favor of the application. He stated that he has never seen more than three cars at one time at the facility when he has been there picking up or dropping off his pet.

Jacqueline Schoenfeld, nearby resident, appeared opposing the application. She stated that her concern was with traffic, and that she has grown accustomed to the noise.

Gary Schoenfeld, resident, appeared opposing the application. He stated that the BZA is being given wrong information about noise from the applicant. The STC values only limit noise within the confines of a building. Noise will come through the building wall, so you will need a high STC value. He stated that noise is a problem; it can be heard 500' feet away. He also noted that traffic is increasing, and several accidents have already occurred in the neighborhood with patrons of Paw's Awhile.

Al Benkelman, neighbor, appeared expressing concerns about the application. He stated that he does not oppose the kennel if it is done correctly. He stated that soundproofing is not mentioned in the letter of intent submitted by the applicant. He further stated that he is opposed to the expansion. Mr. Benkelman suggested installation of speed bumps to help slow down the traffic.

Mr. Meadows asked Mr. Hodge to provide a vicinity map showing the roads in the larger area.

John Neyhouse, client of Paw's Awhile, appeared in favor of the application. He stated that Paws Awhile is a wonderful facility and that allowing them to expand would be helping the community.

Donald Morin, client of Paw's Awhile, appeared in favor of the application. He stated that traffic would be a problem even without the kennel. He stated that increasing the capacity of the facility would be a tremendous help to animal lovers.

Carolyn Doss, client and employee of Paw's Awhile, appeared in favor of the application. She stated that the Sisters are committed to having as little impact as possible on the neighborhood, that the expansion is being well thought out, and would only benefit the neighborhood. She asked that everyone work with the Sisters to resolve any issues.

Daphne Armati, client and neighbor, appeared in favor of the application. She stated that a lot of the traffic in the neighborhood is not due to the kennel. She stated that she has been in and out of the kennel driveway and has only seen 1 or 2 vehicles there.

Helen J. Cleveland, client and neighbor, appeared opposing the application. She noted that she does not believe that the kennel is bad; they do a wonderful job. But, she is opposed to the expansion due to traffic concerns, especially the conflicts with children catching the bus.

George Knauf, local resident, appeared in favor of the application. He stated that the noise level of the kennel does not compare to the noise level in the neighborhood. He stated that while picking up his pets he has never seen anyone speeding, and that the real issue with traffic and speeding in the neighborhood is because of the cross traffic not the Woodlawn traffic.

Gloria MacNeil, client, appeared in favor of the application. She stated that she understands the objection to the noise but that the Sisters are trying to solve the noise problem with the expansion.

Fred A. Jennell, neighbor, appeared opposing the application. He stated that he sees a lot of things while walking his dogs. He is concerned about the noise, and noted that people do speed.

Nikki Marshall, attorney representing the Brookside HOA, appeared opposing the application. She stated the HOA objects to the expansion of the facility and questions the text amendment to the Zoning Ordinance to facilitate the expansion in light of the growth of the community. The HOA is concerned with animal waste, and runoff from medicated baths, flea dips, and skin and coat treatments. She noted that the kennel is on a traditional drainfield and asked for additional safeguards be put into place to address the runoff. The kennel's website advertises 5 miles of walking trails and questioned if the dogs are being walked continually outside.

The BZA recessed for five minutes. The November meeting reconvened at 3:52 p.m.

Mrs. Mailler asked if there were any other speakers.

Linda A. Martin, neighbor, appeared in favor of the application. She stated that when the Sisters came to the community they came to be neighbors. She stated that the noise from the neighborhood is greater than the noise created by the kennel. In terms of cleanliness, noise, setting, and willingness to proceed as a neighbor and as a good business entity in the neighborhood and that their plan deserves to be approved.

Burl Williams, neighbor, appeared in favor of the application. He stated that he is the closest neighbor to Paws Awhile. As a neighbor, noise is a problem, but he acknowledged that the noise will remain if this application is denied and that by approving the application, the noise will be reduced. He stated that the traffic problem is not all Paws Awhile.

George Slack, neighbor, appeared opposing the application. He stated that if this expansion is approved then possibly in five years we will all be back again speaking to another expansion. He noted that the noise is so bad that one neighbor had to put new windows.

Don Knuckles, neighbor, appeared in favor of the application. He stated that traffic coming in and out is not that bad to the kennel. He noted that the Sisters are trying to cut down the sound by enclosing the runs. He stated he has lived there even before the kennel was there, and that he truly believes the Sisters want to do the expansion right. He reiterated that his concerns are not about traffic but about the noise.

Kelly A. Daniels, employee, appeared in favor of the application. She stated that everything will be enclosed with the expansion and that the number of dogs will not increase substantially. The expansion will allow everything to spread out.

Mr. Tucker stated that a couple people apologized to him that they had to leave but that they were in favor of the application.

Mr. Meadows asked Mr. Tucker about the drop off and pick up times. Mr. Meadows heard from some speakers that some pets are being dropped off at 7:00am. He also asked if the 100 dogs include the doggy day care dogs.

Sister Elizabeth, applicant, responded that currently there are 3 pets dropped off before 8:00am. She stated that there are 100 runs in the application; today there are 54 runs but sometimes more than 54 dogs.

Mr. Meadows asked Mrs. Johnson if the hours change and the number of dogs change if re-advertisement is required. Mrs. Johnson indicated that it was probably not technically required, as these details were not advertised, but that the BZA might wish to re-advertise anyway to allow anyone who had looked in the file a chance to see and comment on the changes. Mrs. Gallehr stated that she had not had the opportunity to read the

advertisement but did not believe the hours and numbers were included in the ad. The problem would be with those who have come into the Zoning office to review the application as submitted. She agreed that re-advertisement was not technically necessary.

Mr. Guerra stated that the BZA should not be so rigorous about the hours, because some flexibility was desirable to accommodate emergencies that come up.

Mrs. Gallehr stated that in applications before the BZA the statement of intent and purpose and the application itself submitted by the applicant becomes a part of the special permit. The applicant is limited by what is stated in the application, and in this case the applicant had stated the limited hours.

Mr. Meadows stated concern with the vagueness of VDOT's comment on the application, and suggested that a traffic study might be in order to determine impact on the neighborhood. Mr. Tucker stated that traffic studies are very expensive, but that his clients could provide information about the traffic associated with the kennel. Mrs. Mailler asked Mr. Tucker to provide a one month count of trips in and out of the kennel.

Mr. Martella inquired whether windows would be operable because of potential sound impacts. Mother Eirene that the windows would not typically be open, that systems are designed for the windows to be closed, but that they needed to be operable in case of an emergency such as a power failure.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the BZA moved to defer action until the December 2004 meeting and to keep the public hearing open.

The motion carried 6-0, with Mrs. Bowen abstaining.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the BZA moved to go into a closed meeting for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to potential litigation regarding the Boatwright special permit revocation.

The motion carried unanimously.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, does hereby certify that to the best of each member's knowledge:

1. only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and
2. only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Van Luven, seconded by Mr. Meadows.

AYES: Mr. Guerra, Mr. Tufts, Mr. Van Luven, Mrs. Mailler, Mr. Meadows,
Mrs. Bowen, Mr. Martella

NAYS: None

ABSTENTION: None

ABSENT: None

On a motion by Mr. Van Luven and seconded by Mr. Meadows, the BZA moved to reconsider the Boatwright special permit revocation at the December 2004 hearing.

The motion carried 4-0, with Mrs. Bowen recused and Mr. Guerra and Mr. Martella abstaining.

Mr. Meadows informed the BZA that the Planning Commission is looking at the Zoning Ordinance in reference to wineries.

Mrs. Mailler asked that the minutes be mailed, emailed, or faxed the week after the meeting and comments to be sent back to staff within one week. Mrs. Johnson suggested that the BZA could have 2 weeks as long as corrections are done before the books go out.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 4:58 P.M.

Margaret Mailler, Chairperson

James W. Van Luven, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.